

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MELINDA JACKSON,	:	NO. 1:05-CV-00325
	:	
Plaintiff,	:	
	:	
v.	:	ORDER
	:	
	:	
UNITED DAIRY FARMERS,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's January 10, 2006 Report and Recommendation (doc. 20), to which there were no objections.

Plaintiff filed this action pro se on May 6, 2005, alleging claims for Title VII discrimination, 42 U.S.C. § 2000e-5 et seq., and for violation of the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq. (doc. 2). Plaintiff named her employer, United Dairy Farmers and, eight individuals as Defendants.

On January 10, 2006 the Magistrate Judge issued a Report and Recommendation that (1) Defendant Larry Hornsby's Motion to Dismiss (doc. 11) be construed as unopposed and granted, and (2) this matter go forward on Plaintiff's claims under the FMLA and under Title VII against Defendant United Dairy Farmers (doc. 20). The Magistrate Judge indicates that after Plaintiff failed to file a response to Defendant Hornsby's Motion to Dismiss, the Court issued an Order to show cause why such motion should not be granted

(Id.). On October 17, 2005, the Court vacated its show cause order, having been notified that Plaintiff obtained counsel, and extended the response time on Hornsby's motion until November 14, 2005 (Id.). On November 15, 2005, the parties filed a joint motion under Fed. R. Civ. P. 41(a)(1)(ii) stipulating that Plaintiff's claims against seven of the individual defendants were dismissed with prejudice (Id.). However, the notice of dismissal did not address Plaintiff's claims against Defendant Hornsby (Id.).

Because no response to the Motion to Dismiss has been filed, because Hornsby was not mentioned in the Rule 41 dismissal, and with all the parties' consent, the Magistrate Judge recommends that the Motion to Dismiss be construed as unopposed with respect to Hornsby, and granted for the reasons indicated in the motion (Id.). Moreover, the Magistrate Judge reports that Plaintiff failed to allege any facts showing that Defendant Hornsby qualifies as an employer, a prerequisite to liability under Title VII (Id., citing Wathen v. General Elec. Co., 115 F.3d 400, 405 (6th Cir. 1997)). Neither did Plaintiff name Hornsby in her Equal Employment Opportunity Charge, a requirement under Romain v. Kurek, 836 F.2d 241, 245 (6th Cir. 1987) (per curiam).

Plaintiff was provided proper notice pursuant to Fed. R. Civ. P. 72(b), including the notice that she could waive further appeal should she fail to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United

States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation to be thorough, well-reasoned, and correct. Accordingly, the Court hereby ADOPTS the Magistrate Judge's report (doc. 20), AFFIRMS the Magistrate Judge's recommended decision (Id.), CONSTRUES Defendant Hornsby's Motion to Dismiss as unopposed and GRANTS such motion (doc. 11). This matter shall go forward on Plaintiff's claims under the FMLA and Title VII against Defendant UDF (only).

SO ORDERED.

Dated: February 7, 2006

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge